



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023-000464

First-tier Tribunal No: HU/56580/2022

THE IMMIGRATION ACTS

Decision & Reasons Issued:
On 4 September 2023

Before

UPPER TRIBUNAL JUDGE HANSON

Between

ATAKLTI SIMRET TEFAMICHAEL
(NO ANONYMITY ORDER MADE)

Appellant

and

AN ENTRY CLEARANCE OFFICER

Respondent

Representation:

For the Appellant: Mr Simo, Solicitor.

For the Respondent: Ms Z Young, a Senior Home Office Presenting Officer.

Heard at Phoenix House (Bradford) on 18 August 2023

DECISION AND REASONS

1. The appellant appeals with permission a decision of First-tier Tribunal Judge Hatton ('the Judge'), promulgated following a hearing at Bradford on 9 January 2023, in which the Judge dismissed the appellant's appeal against the refusal by an Entry Clearance Officer ('ECO') of his application for family reunion made under the Immigration Rules.
2. The Judge notes the issue to be determined at [17] which is whether the appellant had established that he was entitled to be granted leave to enter the UK as the child of a relative who has been recognised as a refugee. In this case the appellant's brother. The Judge notes the appellant has to satisfy paragraph 319X of the Immigration Rules.
3. The appellant is a citizen of Eritrea. His application was sponsored by his brother ('the Sponsor'). It was claimed the appellant formed part of his brother's family unit prior to his brother leaving Eritrea in 2014.
4. Having considered the evidence the Judge sets out findings of fact from [30] of the decision under challenge. The first issue considered by the Judge was whether the appellant met the requirements of paragraph 319X (iv), an issue

- that arose as the ECO was not satisfied the appellant was under the age of 18 at the date of application.
5. The Judge examines the competing arguments between [34 - 54], concluding at [55] that he had no hesitation in finding the appellant satisfied paragraph 319 X (iv) of the Rules on the evidence.
 6. Paragraph 319X (ii) was in dispute as the ECO was not satisfied there are serious and compelling family or other considerations which made the appellant's exclusion from the UK undesirable.
 7. The Judge considers this issue between [56 - 87], concluding at [88] that he did not find the appellant capable of satisfying paragraph 319 X (ii) of the Rules.
 8. The Judge then went on to consider Article 8 ECHR, finding the decision proportionate, and therefore dismissing the appeal on human rights grounds.
 9. The appellant sought permission to appeal which was granted by another judge of the First-tier Tribunal on 23 February 2023.
 10. The ECO has filed a Rule 24 response dated 20 March 2023 opposing the appeal on the basis the Judge directed himself appropriately and made detailed findings of fact and inferred reasonable conclusions from the evidence in the appeal.

Discussion and analysis

11. The appellant relies on one ground of challenge, asserting the Judge erred in law by speculating on several key and determinative issues relating to the appellant's circumstances in Addis Ababa, Ethiopia as not being serious and compelling. It is argued that matters were not put to either the Sponsor or the parties during the appeal rendering the proceedings arguably unfair.
12. I say at this stage that I find no evidence of unfairness sufficient to amount to legal error in the manner in which the appeal was conducted by the Judge.
13. The grounds also challenge the Judge's findings at [57 - 58] that the appellant has a legal guardian in Eritrea because somebody accompanied him to the DNA test appointment, arguing the Judge's finding that corroborative evidence should have been provided is arguably wrong as it was not something that could have been reasonably obtained.
14. The grounds argue the Judge unlawfully speculated by finding the UNHCR could have assisted the appellant at [61] and further speculated about the likelihood of the appellant knowing the person described as his guardian in his village at [65].
15. The appellant states at [75] the Judge speculated on the likelihood of the appellant being allowed to leave Eritrea at the age of 14 without accompanying family members, claiming there was no evidence to support such a finding. It is asserted this was a finding used by the Judge to conclude it strongly indicates that the appellant is likely to be residing in Ethiopia with family members who accompanied him there.
16. Mr Simo provided a number of documents on the day of the hearing, but these are not documents that were before the Judge. At this point the question being assessed is whether the Judge erred in law in a manner material to the decision to dismiss the appeal on the basis of the evidence that was before him.
17. To prove the relationship between the appellant and Sponsor DNA evidence was obtained.
18. The Judge notes [56] that although the appellant claimed in his application that he was living rough and alone in Ethiopia the DNA report provided by the appellant had been signed by a guardian with the same family name.
19. In his application the appellant stated he was living in a private house the cost of which was paid to the landlady by the Sponsor. Mr Simo was asked about a

statement made in support of the appeal regarding his living in a church and claimed that the appellant had been “kicked out” of the private accommodation and was now living in the church. Notwithstanding what was claimed the evidence before the Judge did not support a finding that the appellant was living rough and alone in Ethiopia.

20. Mr Simo made a number of submissions in relation to the difference between the definition of a guardian and a legal guardian. The Judge had before him a copy of the DNA results which included a copy of the application. Within those documents is a page headed “Sample Declaration Form”. That document provides the Donor’s name as Ataklti Simret Tesfamichael, date of birth 01/01/2005. The form is signed in two places by a Michael Tesfay Tesfamichael. The first is under a declaration which is in the following terms:

“I hereby declare that I have the legal capacity to give consent and you hereby consent for a sample to be taken from the Donor for DNA relationship analysis at Cellmark. I certify that the information I have provided on this form is correct, and that the sample (s) bearing the Donor’s name has been taken from the Donor. I understand that knowingly provide false information”.

21. The second part of the form refers to a person giving consent if the Donor is under 18 years of age. It specifically requires a parent or person having parental responsibility for the Donor under the Childrens Act 1989 to sign, a reference to the first part, and to complete the second part. The wording of this section states “It is your responsibility to ensure that you have the legal right to give consent”. Michael Tesfamichael signed of form and in relation to the section asking him to confirm his relationship to the Donor wrote “Guardian”.
22. Lawful consent of the person with parental responsibility or the ability to make such decisions for the child is required before a sample can be taken, especially of an underage minor. The individual who signed the form clearly held himself out to have such legal capacity. If it did not, that may cast doubt upon the legality of the process and any weight that could be given to the DNA evidence.
23. The Judge took specific note of the evidence and the assertions made by the Sponsor that the above named individual who came forward as the legal guardian was simply somebody who is also a refugee in Ethiopia who was asked to give help, given that it was impossible to attend the DNA test centre as a child.
24. The Judge clearly considered the evidence with the required degree of anxious scrutiny. He noted the above evidence on the Cellmark form to which he could place appropriate weight. He took into account the claims that were made that the individual was not the appellant’s guardian and found the claims had not been corroborated and could not have the same weight placed upon them as the documentary evidence.
25. The weight to be given to the evidence was a matter for the Judge. It cannot be said to be irrational, perverse, or unreasonable, to conclude as the Judge did in relation to the status of the person who signed the Sample Declaration Form. That clearly indicated to the Judge that the appellant had a guardian with him in Ethiopia. Although the appellant disagrees with this finding I do not find it has been made out this conclusion is outside of the range of those reasonably available to the Judge on the evidence.
26. The Judge’s comment about the UNHCR assisting the appellant in seeking the DNA test results, even speculative, is not a material error as he was attended by the Guardian when the samples were taken.
27. So far as the relationship is concerned, the Judge notes that the legal guardian and the appellant have the same surname, were born in the same village in Eritrea as was made clear by the UNHCR Proof of Registration documents. The

- Judge notes that village is very small housing only between hundred and 50 and 200 families. The Judge notes at [65] that the appellant left his home village sometime in 2019 and concludes, therefore, that he and the named guardian must have known each other before the appellant departed from his village. It has not been shown to be an unreasonable finding or a finding outside the range of those reasonably available to Judge on the evidence. The Judge considered the submission by the Sponsor that there was no relationship but clearly did not attach the weight to that that the appellant would have hoped. The existence of a relationship and the strength of the same is also corroborated by the DNA file.
28. The Judge notes at [72] that the appellant has had abundant opportunity, since receiving the refusal notice, to rebut the position set out in the Refusal letter that the appellant and Guardian are related as recorded by the Judge, but no such evidence had been provided.
 29. The Judge is criticised for findings, in light of the appellant's accepted date of birth showing he was just 14 years old at the time he left his country, Eritrea in 2019, that it was highly unusual for his family members to have permitted him to have travelled from Eritrea to Ethiopia unaccompanied; unless they were satisfied he could be adequately cared for and supported in Ethiopia. The Judge finds this strongly indicates that other members of the appellant's family also travelled from Eritrea to Ethiopia on or before the same period.
 30. Conditions in Eritrea, and Ethiopia recently, have involved situations of conflict that have caused individuals and families to have had to flee to save their lives. It is not unheard of for families to become separated and for young persons to have to continue a journey on their own. In this appeal, however, even if there was nothing to support the Judge's conclusion in relation to whether the appellant left Eritrea to travel to Ethiopia on his own or not, the fact of the matter is the Judge has made a sustainable finding that the appellant has a guardian in Ethiopia and clearly has contact with his brother, the Sponsor, who provides him with support.
 31. The Judge comments upon the lack of evidence to support the appellant's and Sponsors assertions.
 32. At [78] the Judge records UNHCR have a presence at the camp where it is said the appellant was, but neither the appellant nor his legal representative adduced any documentation from the UNHCR capable as corroborating the Sponsors assertions. The claim that the camp had been destroyed in 2021 in the manner described was not accepted by the Judge and in this paragraph indicated that a reasonably diligent representative would adduced background evidence capable of verifying this, but no such evidence had been provided.
 33. The Judge notes at [79] the Sponsor's oral evidence that following the purported destruction in 2021 the appellant was accommodated at the church in Addis Ababa to which he sent £500 which was said to be in stark contrast to the letter from the Eritrea Orthodox Tewadho Church in Addis Ababa, dated 6 November 2022, claiming they had been caring for the appellant at their church but did not have the funds to continue supporting him. I refer against the clarification provided during the course of the hearing before me that the Sponsor had continued to send funds to the appellant to meet his needs. No legal error has been made out in the concerns expressed by the Judge in relation to the letter from the Church or the inability to place the weight upon that letter that the appellant would have preferred.
 34. I do not find the appellant has established legal error material to the decision of the Judge that the appellant could not satisfy paragraph 319 X (ii) of the Immigration Rules. There was insufficient evidence before the Judge to prove

otherwise and recorded concerns about the credibility of some of the things the Judge was being told.

35. In relation to Judges consideration of Article 8 ECHR, the Judge accepts that Article 8(1) is engaged on the basis of family life between the appellant and his brother, the Sponsor. The Judge identifies the issue is that of the proportionality of the decision and at [96 - 97] sets out his arguments for why the decision is proportionate. It has not been made out that is a decision outside the range of those reasonably available to Judge on the evidence. No material legal error is established.
36. Whilst the appellant and Sponsor disagree with the Judge's findings and would clearly prefer a more favourable outcome to enable the appellant to join the Sponsor in the UK, I do not find on the evidence made available to the Judge that material legal error has been made out. Accordingly the determination shall stand.

Notice of Decision

37. There is no material legal error in the decision of the First-tier Tribunal. The determination shall stand.

C J Hanson

Judge of the Upper Tribunal
Immigration and Asylum Chamber

18 August 2023